

(3) The standards set out in paragraph (f) of this section for complying with the provisions of section 7(f)(1)(A)-(E) of the ADEA also will apply for purposes of complying with the provisions of section 7(f)(2)(A) of the ADEA.

(4) The term "reasonable time within which to consider the settlement agreement" means reasonable under all the circumstances, including whether the individual is represented by counsel or has the assistance of counsel.

(5) However, while the time periods under section 7(f)(1) of the ADEA do not apply to subsection 7(f)(2) of the ADEA, a waiver agreement under this subsection that provides an employee the time periods specified in section 7(f)(1) of the ADEA will be considered "reasonable" for purposes of section 7(f)(2)(B) of the ADEA.

(6) A waiver agreement in compliance with this section that is in settlement of an EEOC charge does not require the participation or supervision of EEOC.

(h) *Burden of proof.* In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in section 7(f) of the ADEA, subparagraph (A), (B), (C), (D), (E), (F), (G), or (H) of paragraph (1), or subparagraph (A) or (B) of paragraph (2), have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2) of section 7(f) of the ADEA.

(i) *EEOC's enforcement powers.* (1) Section 7(f)(4) of the ADEA states:

No waiver agreement may affect the Commission's rights and responsibilities to enforce [the ADEA]. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.

(2) No waiver agreement may include any provision prohibiting any individual from:

(i) Filing a charge or complaint, including a challenge to the validity of the waiver agreement, with EEOC, or

(ii) Participating in any investigation or proceeding conducted by EEOC.

(3) No waiver agreement may include any provision imposing any condition precedent, any penalty, or any other

limitation adversely affecting any individual's right to:

(i) File a charge or complaint, including a challenge to the validity of the waiver agreement, with EEOC, or

(ii) Participate in any investigation or proceeding conducted by EEOC.

(j) *Effective date of this section.* (1) This section is effective July 6, 1998.

(2) This section applies to waivers offered by employers on or after the effective date specified in paragraph (j)(1) of this section.

(3) No inference is to be drawn from this section regarding the validity of waivers offered prior to the effective date.

(k) *Statutory authority.* The regulations in this section are legislative regulations issued pursuant to section 9 of the ADEA and Title II of OWBPA.

[63 FR 30628, June 5, 1998]

## PART 1626—PROCEDURES—AGE DISCRIMINATION IN EMPLOYMENT ACT

Sec.

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AUTHORITY: Sec. 9, 81 Stat. 605, 29 U.S.C. 628; sec. 2, Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

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## § 1626.7

SOURCE: 48 FR 140, Jan. 3, 1983, unless otherwise noted.

### § 1626.1 Purpose.

The regulations set forth in this part contain the procedures established by the Equal Employment Opportunity Commission for carrying out its responsibilities in the administration and enforcement of the Age Discrimination in Employment Act of 1967, as amended.

### § 1626.2 Terms defined in the Age Discrimination in Employment Act of 1967, as amended.

The terms *person*, *employer*, *employment agency*, *labor organization*, *employee*, *commerce*, *industry affecting commerce*, and *State* as used herein shall have the meanings set forth in section 11 of the Age Discrimination in Employment Act, as amended.

### § 1626.3 Other definitions.

For purpose of this part, the term *the Act* shall mean the Age Discrimination in Employment Act of 1967, as amended; the *Commission* shall mean the Equal Employment Opportunity Commission or any of its designated representatives; *charge* shall mean a statement filed with the Commission by or on behalf of an aggrieved person which alleges that the named prospective defendant has engaged in or is about to engage in actions in violation of the Act; *complaint* shall mean information received from any source, that is not a charge, which alleges that a named prospective defendant has engaged in or is about to engage in actions in violation of the Act; *charging party* means the person filing a charge; *complainant* means the person filing a complaint; and *respondent* means the person named as a prospective defendant in a charge or complaint, or as a result of a Commission-initiated investigation.

### § 1626.4 Information concerning alleged violations of the Act.

The Commission may, on its own initiative, conduct investigations of employers, employment agencies and labor organizations, in accordance with the powers vested in it pursuant to sections 6 and 7 of the Act. The Commission shall also receive information con-

cerning alleged violations of the Act, including charges and complaints, from any source. Where the information discloses a possible violation, the appropriate Commission office may render assistance in the filing of a charge. The identity of a complainant, confidential witness, or aggrieved person on whose behalf a charge was filed will ordinarily not be disclosed without prior written consent, unless necessary in a court proceeding.

### § 1626.5 Where to submit complaints and charges.

Complaints and charges may be submitted in person, by telephone, or by mail to any of the District, Area or local Offices of the Commission, or to the Washington Field Office, or at the Headquarters of the Commission at Washington, DC, or with any designated representative of the Commission. The addresses of the Commission's District, Area and Local Offices appear at § 1610.4.

[48 FR 140, Jan. 3, 1983, as amended at 49 FR 13025, Apr. 2, 1984; 54 FR 32063, Aug. 4, 1989]

### § 1626.6 Form of charge.

A charge shall be in writing and shall name the prospective respondent and shall generally allege the discriminatory act(s). Charges received in person or by telephone shall be reduced to writing.

### § 1626.7 Timeliness of charge.

(a) Charges will not be rejected as untimely provided that they are not barred by the statute of limitations as stated in section 6 of the Portal to Portal Act of 1947.

(b) Potential charging parties will be advised that, pursuant to section 7(d) (1) and (2) of the Act, no civil suit may be commenced by an individual until 60 days after a charge has been filed on the subject matter of the suit, and such charge shall be filed with the Commission or its designated agent within 180 days of the alleged discriminatory action, or, in a case where the alleged discriminatory action occurs in a State which has its own age discrimination law and authority administering that

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law, within 300 days of the alleged discriminatory action, or 30 days after receipt of notice of termination of State proceedings, whichever is earlier.

(c) For purposes of determining the date of filing with the Commission, the following applies:

- (1) Charges filed by mail:
  - (i) Date of postmark, if legible,
  - (ii) Date of letter, if postmark is illegible,
  - (iii) Date of receipt by Commission, or its designated agent, if postmark and letter date are illegible and/or cannot be accurately affixed;
- (2) Written charges filed in person: Date of receipt;
- (3) Oral charges filed in person or by telephone, as reduced to writing: Date of oral communication received by Commission.

**§ 1626.8 Contents of charge; amendment of charge.**

(a) In addition to the requirements of § 1626.6, each charge should contain the following:

- (1) The full name, address and telephone number of the person making the charge;
- (2) The full name and address of the person against whom the charge is made;
- (3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices;
- (4) If known, the approximate number of employees of the prospective defendant employer or members of the prospective defendant labor organization.
- (5) A statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a State agency charged with the enforcement of fair employment practice laws and, if so, the date of such commencement and the name of the agency.

(b) Notwithstanding the provisions of paragraph (a) of this section, a charge is sufficient when the Commission receives from the person making the charge either a written statement or information reduced to writing by the Commission that conforms to the requirements of § 1626.6.

(c) A charge may be amended to clarify or amplify allegations made therein. Such amendments and amendments alleging additional acts which constitute unlawful employment practices related to or growing out of the subject matter of the original charge will relate back to the date the charge was first received. A charge that has been so amended shall not again be referred to the appropriate State agency.

**§ 1626.9 Referral to and from State agencies; referral States.**

(a) The Commission may refer all charges to any appropriate State agency and will encourage State agencies to refer charges to the Commission in order to assure that the prerequisites for private law suits, as set out in section 14(b) of the Act, are met. Charges so referred shall be deemed to have been filed with the Commission in accordance with the specifications contained in § 1626.7(b). The Commission may process any charge at any time, notwithstanding provisions for referral to and from appropriate State agencies.

(b) States to which all ADEA charges may be referred: Alaska, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Guam, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Puerto Rico, South Carolina, Utah, Virgin Islands, West Virginia, and Wisconsin.

(c) States to which only specified classes of charges are referred: Arizona, Colorado, Kansas, Maine, Ohio, Rhode Island, South Dakota, and Washington.

**§ 1626.10 Agreements with State or local fair employment practices agencies.**

(a) Pursuant to sections 6 and 7 of the ADEA and section 11(b) of the FLSA, the Commission may enter into agreements with State or local fair employment practices agencies to cooperate in enforcement, technical assistance, research, or public informational activities, and may engage the services of

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such agencies in processing charges assuring the safeguard of the Federal rights of aggrieved persons.

(b) The Commission may enter into agreements with State or local agencies which authorize such agencies to receive charges and complaints pursuant to §1626.5 and in accordance with the specifications contained in §§ 1626.7 and 1626.8.

(c) When a worksharing agreement with a State agency is in effect, the State agency will act on certain charges and the Commission will promptly process charges which the State agency does not pursue. Charges received by one agency under the agreement shall be deemed received by the other agency for purposes of § 1626.7

### § 1626.11 Notice of charge.

Upon receipt of a charge, the Commission shall promptly notify the respondent that a charge has been filed.

### § 1626.12 Conciliation efforts pursuant to section 7(d) of the Act.

Upon receipt of a charge, the Commission shall promptly attempt to eliminate any alleged unlawful practice by informal methods of conciliation, conference and persuasion. Upon failure of such conciliation the Commission will notify the charging party. Such notification enables the charging party or any person aggrieved by the subject matter of the charge to commence action to enforce their rights without waiting for the lapse of 60 days.

### § 1626.13 Withdrawal of charge.

Charging parties may request withdrawal of a charge. Because the Commission has independent investigative authority, see §1626.4, it may continue any investigation and may secure relief for all affected persons notwithstanding a request by a charging party to withdraw a charge.

### § 1626.14 Right to inspect or copy data.

A person who submits data or evidence to the Commission may retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that a witness may for good cause be limited to inspection of

the official transcript of his or her testimony.

### § 1626.15 Commission enforcement.

(a) As provided in sections 9, 11, 16 and 17 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 209, 211, 216 and 217) (FLSA) and sections 6 and 7 of this Act, the Commission and its authorized representatives may (1) investigate and gather data; (2) enter and inspect establishments and records and make transcripts thereof; (3) interview employees; (4) impose on persons subject to the Act appropriate record-keeping and reporting requirements; (5) advise employers, employment agencies and labor organizations with regard to their obligations under the Act and any changes necessary in their policies, practices and procedures to assure compliance with the Act; (6) subpoena witnesses and require the production of documents and other evidence; (7) supervise the payment of amounts owing pursuant to section 16(c) of the FLSA, and (8) institute action under section 16(c) or section 17 of the FLSA or both to obtain appropriate relief.

(b) Whenever the Commission has a reasonable basis to conclude that a violation of the Act has occurred or will occur, it may commence conciliation under section 7(b) of the Act. The date of issuance of written notice to the respondent of the Commission's intent to begin or continue conciliation shall determine when the statute of limitations is tolled pursuant to section 7(e)(2) of the Act. Such notice will ordinarily be issued in the form of a letter of violation; provided, however, that failure to issue a written violation letter shall in no instance be construed as a finding of no violation. The Commission will ordinarily notify the respondent and aggrieved persons of its determination. In the process of conducting any investigation or conciliation under this Act, the identity of persons who have provided information in confidence shall not be disclosed except in accordance with §1626.4. When the written notice prescribed above is issued, the statute of limitations shall be tolled for a period of one year unless a

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conciliation agreement is obtained earlier. The tolling period pursuant to section 7(e)(2) is applicable to both Commission and private party litigation.

(c) Any agreement reached as a result of efforts undertaken pursuant to this section shall, as far as practicable, require the respondent to eliminate the unlawful practice(s) and provide appropriate affirmative relief. Such agreement shall be reduced to writing and will ordinarily be signed by the Commission's delegated representative, the respondent, and the charging party, if any. A copy of the signed agreement shall be sent to all the signatories thereto.

(d) Upon the failure of informal conciliation, conference and persuasion under section 7(b) of the Act, the Commission may initiate and conduct litigation.

(e) The District Directors, the Washington Field Office Director, and the Director of the Office of Program Operations or their designees, are hereby delegated authority to exercise the powers enumerated in § 1626.15(a) (1) through (7) and (b) and (c). The General Counsel or his/her designee is hereby delegated the authority to exercise the powers in paragraph (a) of this section and at the direction of the Commission to initiate and conduct litigation.

[48 FR 140, Jan. 3, 1983, as amended at 54 FR 32063, Aug. 4, 1989; 54 FR 33503, Aug. 15, 1989]

### § 1626.16 Subpoenas.

(a) To effectuate the purposes of the Act the Commission shall have the authority to issue a subpoena requiring:

(1) The attendance and testimony of witnesses;

(2) The production of evidence including, but not limited to, books, records, correspondence, or documents, in the possession or under the control of the person subpoenaed; and

(3) Access to evidence for the purpose of examination and the right to copy.

(b) The power to issue subpoenas has been delegated by the Commission, pursuant to section 6(a) of the Act, to the General Counsel, the District Directors, the Washington Field Office Director, the Director of the Office of Program Operations, or their designees. The subpoena shall state the name, address and title of the issuer,

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identify the person or evidence subpoenaed, the name of the person to whom the subpoena is returnable, the date, time and place that testimony is to be given or that documents are to be provided or access provided.

(c) A subpoena issued by the Commission or its designee pursuant to the Act is not subject to review or appeal.

(d) Upon the failure of any person to comply with a subpoena issued under this section, the Commission may utilize the provisions of sections 9 and 10 of the Federal Trade Commission Act, 15 U.S.C. 49 and 50, to compel compliance with the subpoena.

(e) Persons subpoenaed shall be entitled to the same fees and mileage that are paid witnesses in the courts of the United States.

[48 FR 140, Jan. 3, 1983, as amended at 54 FR 32063, Aug. 4, 1989]

### § 1626.17 Procedure for requesting an opinion letter.

(a) A request for an opinion letter should be submitted in writing to the Chairman, Equal Employment Opportunity Commission, 1801 L Street NW., Washington DC 20507, and shall contain:

(1) A concise statement of the issues on which an opinion is requested;

(2) As full a statement as possible of relevant facts and law; and

(3) The names and addresses of the person making the request and other interested persons.

(b) Issuance of an opinion letter by the Commission is discretionary.

(c) *Informal advice.* When the Commission, at its discretion, determines that it will not issue an opinion letter as defined in § 1626.18, the Commission may provide informal advice or guidance to the requestor. An informal letter of advice does not represent the formal position of the Commission and does not commit the Commission to the views expressed therein. Any letter other than those defined in § 1626.18(a)(1) will be considered a letter of advice and may not be relied upon by any employer within the meaning of section 10 of the Portal to Portal Act

of 1947, incorporated into the Age Discrimination in Employment Act of 1967 through section 7(e)(1) of the Act.

[48 FR 140, Jan. 3, 1983, as amended at 54 FR 32063, Aug. 4, 1989]

**§ 1626.18 Effect of opinions and interpretations of the Commission.**

(a) Section 10 of the Portal to Portal Act of 1947, incorporated into the Age Discrimination in Employment Act of 1967 through section 7(e)(1) of the Act, provides that:

In any action or proceeding based on any act or omission on or after the date of the enactment of this Act, no employer shall be subject to any liability or punishment \* \* \* if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulations, order, ruling, approval or interpretation \* \* \* or any administrative practice or enforcement policy of [the Commission].

The Commission has determined that only (1) a written document, entitled "opinion letter," signed by the Legal Counsel on behalf of and as approved by the Commission, or (2) a written document issued in the conduct of litigation, entitled "opinion letter," signed by the General Counsel on behalf of and as approved by the Commission, or (3) matter published and specifically designated as such in the FEDERAL REGISTER, may be relied upon by any employer as a "written regulation, order, ruling, approval or interpretation" or "evidence of any administrative practice or enforcement policy" of the Commission "with respect to the class of employers to which he belongs," within the meaning of the statutory provisions quoted above.

(b) An opinion letter issued pursuant to paragraph (a)(1) of this section, when issued to the specific addressee, has no effect upon situations other than that of the specific addressee.

(c) When an opinion letter, as defined in paragraph (a)(1) of this section, is requested, the procedure stated in § 1626.17 shall be followed.

**§ 1626.19 Rules to be liberally construed.**

(a) These rules and regulations shall be liberally construed to effectuate the purposes and provisions of this Act and

any other acts administered by the Commission.

(b) Whenever the Commission receives a charge or obtains information relating to possible violations of one of the statutes which it administers and the charge or information reveals possible violations of one or more of the other statutes which it administers, the Commission will treat such charges or information in accordance with all such relevant statutes.

(c) Whenever a charge is filed under one statute and it is subsequently believed that the alleged discrimination constitutes an unlawful employment practice under another statute administered and enforced by the Commission, the charge may be so amended and timeliness determined from the date of filing of the original charge.

**PART 1627—RECORDS TO BE MADE OR KEPT RELATING TO AGE: NOTICES TO BE POSTED: ADMINISTRATIVE EXEMPTIONS**

**Subpart A—General**

Sec.

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**Subpart B—Records To Be Made or Kept Relating to Age; Notices To Be Posted**

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1627.3 Records to be kept by employers.

1627.4 Records to be kept by employment agencies.

1627.5 Records to be kept by labor organizations.

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1627.10 Notices to be posted.

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**Subpart C—Administrative Exemptions**

1627.15 Administrative exemptions; procedures.

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**Subpart D—Statutory Exemption**

1627.17 Calculating the amount of qualified retirement benefits for purposes of the exemption for bona fide executives or high policymaking employees.

AUTHORITY: Sec. 7, 81 Stat. 604; 29 U.S.C. 626; sec. 11, 52 Stat. 1066, 29 U.S.C. 211; sec. 12,